

7315 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 23, 2002

The Honorable Shirley R. Hinson
Member, House of Representatives
306-A Blatt Building
Columbia, South Carolina 29211

**Re: Your Letter of February 8, 2002
Chess Challenge Video Game Machine**

Dear Representative Hinson:

In the above-referenced letter, you request an opinion from this Office concerning the legality of a particular video game machine. You indicate that several of your constituents have approached you about "a game called 'Chess Challenge' and they assume and are convinced that it is perfectly legal ..." By way of background, you state that you "... spoke with Sheriff DeWitt (Berkeley County) and Solicitor Hoisington (9th Judicial Circuit) regarding this machine and they told [you] that the game was obviously a game of skill therefore making it legal as long as there were no cash payouts involved." You further indicate "that out of an abundance of caution [you] request an advisory opinion from [this Office] with respect to the legality of this particular machine."

Typically, of course, this Office does not give advice in advance as to video games. The role of this Office is to advise SLED in assisting that agency to perform its law enforcement duties. However, we are required by law to give legal advice to members of the General Assembly and for that reason, together with the fact that the Solicitor and Sheriff have advised that this machine is legal, we will provide our thoughts to you.

Following your request and strictly as a result of your request, I, as well as an agent from the South Carolina Law Enforcement Division, examined a "Chess Challenge" machine. We have been advised that the machine is the only one in existence at this time; that it is, in essence, a prototype. We have also been advised that players are apprised that cash payouts are expressly prohibited with regard to the operation of the Chess Challenge game and that tickets issued to players may be redeemed only for prizes and merchandise. In addition, we have been advised that there exists no owners' manual or manufacturer's specifications related to this machine. No administrative, accounting and/or game function screens could be accessed through the machine's keyboard or any other location within the cabinet of the machine. The machine's appearance and operation are similar to other video gaming machines which have been found to be in violation of S.C. Code Ann.

Request Letter

The Honorable Shirley R. Hinson
Page 2
April 23, 2002

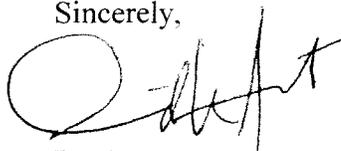
§12-21-2710 (Types of machines and devices prohibited by law). It is obvious, however, that the machine which has been provided for our review has been carefully crafted to avoid the proscriptions of Section 12-21-2710. In other words, the machine which we have reviewed has been cleverly designed to avoid the laws which deem gambling devices illegal *per se*.

Given the specific set up of the machine we reviewed and the fact that we have been provided no owners' manual nor been provided any administrative/game function screens from which a more detailed analysis could be performed, I can only say that the machine we reviewed appears not to fall within the prohibitions of Section 12-21-2710 and thus would not be subject to seizure.

Let me emphasize, however, that relatively minor changes could be made in this game which would transform the machine into an illegal *per se* game of chance. If that in fact becomes the case – i.e. the machine is altered to make it into a game of chance – the analysis here is inapplicable. Moreover, should it become known that the machines which are ultimately distributed in South Carolina have been so altered or made capable of such alteration, this Office will advise law enforcement that the machines are subject to immediate seizure pursuant to S.C. Code Ann. Section 12-21-2712. In addition, it goes without saying that this machine, nor any like it, may be used to circumvent the State's gambling laws. The elements of gambling in South Carolina are consideration, chance and prize. No violation of the State's gambling laws will be tolerated.

This letter is an advisory opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Avant", written over a horizontal line.

David K. Avant
Assistant Attorney General

DKA/an